# Baltim Timber Sdn Bhd v Director of Forests & Ors

HIGH COURT (KUCHING) — SUIT NO KG 27 OF 1993/(III)
ELIZABETH CHAPMAN JC
18 DECEMBER 1995

***Public Authorities*** *— Director of Forests — Revocation of timber licence — Controlling shares in licensee company transferred — Whether action for damages against Director of Forests barred by limitation — Whether revocation of licence an act done in execution of public duty — Time from which limitation period begins to run — Sarawak Forest Ordinance (Sarawak Cap 126) ss 2(2) & 55 — Public Authorities Protection Act 1948 s 2(a)*

***Limitation*** *— Public authorities — Action for damages against Director of Forests — Revocation of timber licence — Whether revocation of licence an act done in execution of public duty — Time from which limitation period begins to run — Sarawak Forest Ordinance (Sarawak Cap 126) ss 2(2) & 55 — Public Authorities Protection Act 1948 s 2(a)*

The plaintiff was the holder of a forest timber licence which was revoked by the Director of Forests ('the first defendant') on 11 March 1987. The licence was issued by the first defendant under s 55 of the Sarawak Forest Ordinance (Sarawak Cap 126) ('the Forest Ordinance') on 26 May 1981 and was valid for ten years. In his letter dated 15 May 1987, the first defendant stated that the licence was revoked because the plaintiff had breached s 2(2) of the Forest Ordinance in that it had transferred the controlling shares in the company since the date of issue of the licence and had entered into an agreement with another company, the effect of which was that the benefit of the licence went to the other company. On 9 March 1993, the plaintiff commenced an action against the first defendant for damages. A preliminary issue arose as to whether the plaintiff's suit was barred by the 36-month limitation period as specified in s 2(a) of the Public Authorities Protection Act 1948 ('the PAPA').

**Held**, striking out the plaintiff's suit:

(1) The licence was revoked not because there was a breach of the terms of the licence, but because there was a breach of a statutory provision, that is, s 2(2) of the Forest Ordinance. Accordingly, the revocation of the licence was an act done in the execution of a public duty and, under s 2(a) of the PAPA, any claim arising from such an act must be made within 36 months from the date of revocation (see pp 107E–F, 108E–G).

(2) Based on its pleadings, the plaintiff was injured by a single act of the first defendant, that is, the revocation of its licence on 11 March 1987 and any damage or injury which arose from that singular act. Time began to run from this date and not from the

time when the damage or injury ceased. Accordingly, the plaintiff's suit which was filed almost 72 months after the revocation of the licence was barred by limitation by virtue of s 2(a) of the PAPA (see p 107F–G, I; *Mak Koon Yong & Anor v Municipal Councillors, Malacca* [1967] 1 MLJ 256 and *Government of Malaysia v Lee Hock Ning* [1973] 2 MLJ 51 followed).

**[Bahasa Malaysia summary**

Plaintif adalah pemegang lesen pembalakan hutan yang telah dibatalkan oleh Pengarah Perhutanan ('defendan pertama') pada 11 Mac 1987. Lesen telah diisu oleh defendan pertama di bawah s 55 Ordinan Perhutanan Sarawak (Sarawak Bab 126) ('Ordinan Perhutanan itu') pada 26 Mei 1981 dan adalah sah untuk 10 tahun. Dalam suratnya bertarikh 15 Mei 1987, defendan pertama mengatakan bahawa lesen dibatalkan kerana plaintif telah melanggar s 2(2) Ordinan Perhutanan itu dengan pemindahan syer kawalan syarikat itu selepas tarikh lesen diisu dan telah memasuki perjanjian dengan syarikat lain, yang mengakibatkan manfaat lesen itu berpindah ke syarikat yang lain itu. Pada 9 Mac 1993, plaintif telah memulakan tindakan terhadap defendan pertama memohon ganti rugi. Isu permulaan yang timbul ialah sama ada tindakan plaintif dihalang oleh had masa 36 bulan seperti yang diperuntukkan dalam s 2(a) Akta Perlindungan Pihak Berkuasa Awam 1948 ('Akta itu').

**Diputuskan**, membatalkan tindakan plaintif:

(1) Lesen telah dibatalkan bukan kerana terdapat pelanggaran terma lesen itu, tetapi kerana terdapat pelanggaran peruntukan statutori, iaitu, s 2(2) Ordinan Perhutanan itu. Oleh itu, pembatalan lesen itu adalah tindakan yang dibuat di atas pelaksanaan tugas awam dan, di bawah s 2(a) Akta itu, apa-apa tuntutan yang timbul dari tindakan sebegitu mesti dibuat dalam masa 36 bulan dari tarikh pembatalan itu (lihat ms 107E–F, 108E–G).

(2) Berdasarkan pada pliding, plaintif telah mengalami kerugian oleh kerana satu tindakan oleh defendan pertama, iaitu, pembatalan lesennya pada 11 Mac 1987 dan apa-apa kerosakan atau kerugian yang timbul dari tindakan yang satu itu. Masa mula bergerak dari tarikh itu dan bukan apabila kerosakan atau kerugian berhenti. Oleh yang demikian, guaman plaintif yang telah difailkan hampir 72 bulan selepas pembatalan lesen telah dihalang oleh had masa mengikut s 2(a) Akta itu (lihat ms 107F–G, I; *Mak Koon Yong & Anor v Municipal Councillors, Malacca* [1967] 1 MLJ 256 dan *Government of Malaysia v Lee Hock Ning* [1973] 2 MLJ 51 diikut).]

[*Editorial note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No Q–01–7–96.]

**Notes**

For a case on Director of Forests, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) para 1403.

For cases on the limitation period for public authorities, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1900–1902.

**Cases referred to**

*Bradford Corp v Meyers* [1916] 1 AC 242

*Government of Malaysia v Lee Hock Ning* [1973] 2 MLJ 51

*Mak Koon Yong & Anor v Municipal Councillors, Malacca* [1967] 1 MLJ 256

*Nam Seng Co v Wing Yew (Tawau) Co Sdn Bhd* [1978] 2 MLJ 198

**Legislation referred to**

Contracts Act 1950 s 2(h)

Sarawak Forest Ordinance (Sarawak Cap 126) ss 2(2), 35, 49, 51, 55

Public Authorities Protection Act 1948 s 2(a)

Sarawak Interpretation Ordinance (Sarawak Cap 1) s 22(2)

Sarawak Limitation Ordinance (Sarawak Cap 49) s 5

*Loh Siew Cheang* (*Yong Siew Mee* with him) (*HC Lee & Co*) for the plaintiffs.

*Abdul Rahman Sebli* (Senior Legal Officer) (*Lim Heng Choo* (Legal Officer) with him) for the defendant.

*Cur Adv Vult*

**Elizabeth Chapman JC**: The plaintiff's cause of action here is based on the revocation of the plaintiff's forest timber licence No T/3070 by the Director of Forests ('the first defendant'). The revocation took place on 11 March 1987. The claims of the plaintiff are for special damages, loss of profit, general damages for breach of contract, alternatively, general damages in tort and other consequential relieves and costs. The suit was filed by the plaintiff on 9 March 1993. The licence came to an end on 11 March 1987, that is the date of revocation of the licence. It is observed that the plaintiff's amended statement of claim does not pray for any declaration or order that the revocation of the licence was invalid. The plaintiff's claims are only for damages and other consequential relief.

What is in issue here is that the plaintiff was not accorded an opportunity to be heard and that the revocation of the licence was not carried out in accordance with the conditions of the licence. Both parties have agreed that the issue of limitation should be determined as a preliminary issue before the trial of this case.

It is necessary, in my view, to consider the nature of the licence. The licence was issued under s 55 of the Sarawak Forest Ordinance (Sarawak Cap 126) ('the Forest Ordinance') by the first defendant with the approval of the minister. It was signed by the first defendant and the minister. The

licence contained conditions imposed by the first defendant who can impose such special conditions under s 55 of the Forest Ordinance. The period of the licence, which was from 26 May 1981 to 25 May 1991, was fixed by the first defendant. The plaintiff accepted the licence when the same was issued.

The plaintiff in his amended statement of claim has not pleaded that the licence is an 'agreement'. Under s 2(h) of the Contracts Act 1950, it is provided that an agreement enforceable by law is a contract. In the licence, no consideration is stated therein nor was any consideration given by the plaintiff as licensee. The licence made no reference to the Government of Sarawak. It only states that it was issued by the first defendant in exercise of powers conferred by s 55 of the Forest Ordinance. In *Nam Seng Co v Wing Yew (Tawau) Co Sdn Bhd* [1978] 2 MLJ 198, Lee Hun Hoe CJ (Borneo) as he then was held at p 200I:

> It is very important to note the difference between ss 15 and 24 of the Sabah Forest Ordinance (Sabah Cap 169). A licence issued under s 24 is personal to holder and not transferable in any manner whatsoever. Such a licence may be issued by the conservator or his representative and does not require a licensee to countersign on the licence. But, in the case of a licence agreement all parties concerned, including the Minister, are required to sign as if the licence were an agreement which contains various terms and conditions.

In this instant case, the plaintiff's signature does not appear any where in the licence. Under the Forest Ordinance, the first defendant is conferred various powers and duties which include the issue of licences and permits to take forest produce including timber. (See ss 49 and 51 of the Forest Ordinance.) The first defendant is under a duty to ensure that all licences comply with the provisions of the Forest Ordinance. Under s 2(2) of the Forest Ordinance, the first defendant is under a duty to ensure that the licensee does not breach the provision of that section. In this instant case, in the first defendant's letter to the plaintiff dated 15 May 1987 he stated that the licence was revoked because the plaintiff had breached the provisions of s 2(2) of the Forest Ordinance in that he had transferred the controlling shares in his company since the date of the issue of the said licence and that he had, since the date of the issue of the said licence, entered into an agreement with Kastima Lumber Sdn Bhd and had granted a power of attorney, the effect of which was, the benefits of the said licence went to Kastima Lumber Sdn Bhd. Section 2(2) of the Forest Ordinance states:

> Where a licence or permit is, under this ordinance, declared not to be transferable, the licence or permit shall, unless the conservator or a person authorized by him in that behalf otherwise directs, be invalid if:
>
> (a) the holder thereof transfers the licence or permit;
>
> (b) in the case of a licence or permit issued to a company, the controlling shares in the company are transferred;
>
> (c) in the case of a licence or permit issued to a partnership, there is a change, save by operation of law, in the partnership; or

A (d) the holder thereof enters into an agreement with any other person, the effect of which is to enable the benefits conferred by the licence or permit to be enjoyed by any other person.

The first defendant, in this case, acted in exercise of his statutory power. Under s 22(2) of the Sarawak Interpretation Ordinance (Sarawak Cap 1) ('the Interpretation Ordinance'), the power to grant a licence, permit, B approval includes the power to withdraw such licence, permit, approval. The licence, in this case, was issued by the first defendant under s 55 of the Forest Ordinance and the conditions of the licence were imposed by the first defendant pursuant to powers conferred by the said section. The same has to be read with s 22(2) of the Interpretation Ordinance. As such, s 2(a) C of the Public Authorities Protection Act 1948 ('the PAPA') applies. Section 2(a) of the said Act provides:

(2) Where, after the coming into force of this act any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any D alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect:

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next E after the ceasing thereof.

Here, the first defendant revoked the licence because there was a breach of paras (a) and (d) of s 2(2) of the Forest Ordinance. The licence, in this case, was revoked not because there was a breach of the terms of the licence, but because there was a breach of a statutory provision in that F there was a transfer of controlling shares in the plaintiff company. Accordingly, the revocation of the licence was an act done in the execution or intended execution of a public duty. Hence, any claim arising from such an act must be made within 36 months from the date of the revocation. This suit was filed almost 72 months after the revocation of the licence. It G is therefore barred by virtue of s 2(a) of the PAPA. Based on the pleadings, the plaintiff was injured by a single act of the first defendant, ie the revocation of its timber licence on 11 March 1987. Any damage or injury to the plaintiff arose from that singular act. In *Mak Koon Yang & Anor v Municipal Councillors, Malacca* [1967] 1 MLJ 256 the High Court held at H p 259:

> Time would therefore begin to run for the purposes of the Public Authorities Protection Ordinance 1948, from the time when the act was caused, not from the time when the injury or damage ceased, or in the case of a continuing injury or damage, when the act causing the injury or damage ceased.

I Continuance of injury or damage means continuance of a legal injury and not merely continuance of the injurious effects of a legal injury: 24 *Halsbury's Laws of England* (3rd Ed) at para 339, p 188.

The plaintiff in this case is relying on the injurious effects of the legal injury which arose as a result of the defendant's single act of revoking the licence in March 1987. In *Government of Malaysia v Lee Hock Ning* [1973] 2 MLJ 51, Lord Kilbrandon in delivering the judgment of the Board said at pp 51–52:

> In cases arising out of breach of contract, as in cases arising out of tort, the question is the same, although it may be more difficult to find the answer in the former than in the latter class: is the suit one in respect of a neglect (eg negligence) or default (eg breach of contract) in the execution by the authority of law, duty or authority? The phrase 'execution of duty or authority' is somewhat inelegant, but it is employed, in their Lordships' view, in order to make clear that no distinction is to be made, in classifying the neglect or default, according as it was committed in the exercise of a positive duty laid or a permissive power conferred on the authority.

A passage from the judgment of Lord Shaw of Dumfermline in *Bradford Corp v Meyers* [1916] 1 AC 242 at p 248 was quoted by the Privy Council in this case:

> If there be a duty arising from statute or the exercise of a public function there is a correlative right similarly. In both of these cases, accordingly, the Public Authorities Protection Act 1948 applies.

In the Sarawak Limitation Ordinance (Sarawak Cap 49) ('the Limitation Ordinance') enacted on 1 January 1959, s 5 states:

> When, by any special law now or hereafter in force in Sarawak, a period of limitation is especially prescribed for any suit, nothing herein contained shall affect or alter the period so prescribed.

The PAPA was enforced in Sarawak on 25 February 1965. The effect of s 5 of the Limitation Ordinance is that any provision prescribing for the limitation period in the Limitation Ordinance is superseded by s 2(a) of the PAPA. The PAPA applies to cases arising out of tort or alleged breach of contract and a period of 36 months is stipulated for any party wishing to institute legal proceedings. As this suit was filed by the plaintiff more than 36 months from the date of revocation of the licence it is barred by virtue of s 2(a) of the PAPA, the law of limitation is applicable here.

For the reasons given above, this suit is struck out with costs.

*Suit struck out.*

Reported by AP Kinnear